

REMARKS

Applicants would like to thank Examiner Cathey for the courtesies extended Applicants' representative during the phone interview held on August 18, 2005. Receipt of the Examiner's Interview Summary Record is acknowledged. As noted in the Interview Summary Record, during that interview there was a discussion of the content of the Final Office Action both with respect to the indication that the preamble of claim 1 was not given any weight and the asserted obviousness rejection. More particularly, in the "Response to Amendment" portion of the Final Office Action there was an indication that ***"[t]he amendment was ineffective because the amendment only added information to the preamble which is not considered further limiting the claims."*** Also, in the claim rejection portion of the Final Office Action, the Examiner referenced the below quoted disclosure from US Pat. No 5,410,346 in support of the obviousness rejection:

The monitoring system 2 comprises a stereoscopic optical system 10 as an imaging system for taking the optical image within a predetermined area outside the vehicle, and a stereoscopic picture processing apparatus 20 as picture processing means for processing a picture imaged by the stereoscopic optical system 10 to calculate the three-dimensional distance distribution information, and a road/three-dimensional detecting apparatus 100 as road/three-dimensional detecting means adapted for inputting distance information from the stereoscopic picture processing apparatus 20 to detect, at a high speed, road shape and/or three-dimensional positions of a plurality of three-dimensional objects from the distance information. The monitoring system 2 is connected to an external device for controlling actuators (not shown), or the like, thus making it possible to perform an operation such as a warning to a driver or an automatic collision avoidance of the vehicle, etc. when the recognized object is considered as an obstacle to the vehicle 1.

It was set out in the Office Action that the above disclosure of US Pat. No. 5,410,346 was considered to teach:

- (i) a vehicle front-view monitoring system
- (ii) for taking fail safe measures

(iii) preventing at least one of a vehicle control and a warning control executing on the basis of the front-view monitoring system from malfunctioning due to lowering a monitoring accuracy.

The above discussion as to the teachings of the '346 patent refers to the preamble features of Claim 1 of the present invention as having weight and thus this is inconsistent with the indication they were not being given any weight. In any event, this treatment in the rejection portion of the Office Action of the preamble as though having weight is considered accurate by Applicants as a review of the claim in its entirety reveals an interrelationship between the preamble and the main body with that interaction "breathing life" into the preamble. As set forth by the Federal Circuit, whether terminology in a preamble portion of a claim is given weight or not depends upon the usage of that terminology in the context of the claim. In *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257, 9 USPQ2d 1962, 1966 (Fed. Cir. 1989) there was indicated: "The effect preamble language should be given can be resolved only on review of the entirety of the patent to gain an understanding of what the inventors actually invented and intended to encompass by the claim" *Id at 1257/1966*. As set out in *Pitney Bowes, Inc. v. Hewlett Packard Co.*(182 F.3d 1298 (Fed Cir. 1999)): "[A] claim preamble has the import that the claim as a whole suggests for it." *Bell Communications Research, Inc. v. Vitalink Communications Corp.*, 55 F.3d 615, 620, 34 USPQ2d 1816, 1820 (Fed. Cir. 1995). If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is "necessary to give life, meaning, and vitality" to the claim, then the claim preamble should be construed as if in the balance of the claim. *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 480-81 (CCPA 1951); see also *Rowe v. Dror*, 112 F.3d 473, 478, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997)

Applying the foregoing, it is respectfully submitted that the full content of the claim should be taken into consideration including the preamble on the basis that it is clear from the language usage in claim 1 that there is an interrelationship between the preamble in claim 1 and

the main body of claim 1. For example, provided below is claim 1 with bolded interrelationship examples of the preamble and main body directed at the present invention's ability to implement a fail safe mode wherein there is prevented execution of at least one of a vehicle control and warning control when there is **a fail on the monitoring system**. A fail on the monitoring system is based on the luminance data where there is created a potential for a lowering of monitoring accuracy (e.g., the potential for a misinterpretation of the situation in front of the vehicle due, for example, to the presence of a sunlight diffusion disc within the monitored area as shown in Figure 2).

1. (Currently Amended) *A vehicle front-view monitoring system for taking fail-safe measures preventing at least one of a vehicle control and a warning control executing on the basis of the vehicle front-view monitoring system from malfunctioning due to lowering a monitoring accuracy, the system comprising:*

*a camera device for taking an image of a view in front;
a calculator for calculating luminance data on the image; and
a determination section for determining whether there is a fail occurring on the monitoring system based on the luminance data, the fail-safe measures being taken if the fail is occurring.*

Thus, it is clear from the foregoing that there are sufficient interrelationships between the preamble and the main body as to warrant treatment of the preamble of claim 1 as having "weight".

As to the obviousness rejection raised against claim 1, the indication that the above quoted portion of the '346 patent relied upon in the Office Action renders obvious the claimed invention is respectfully traversed. The '346 patent fails entirely to disclose a front view monitoring system that has a determining section that determines when the monitoring system is under a "fail" condition due to the luminance data being such that there is deemed to have developed a lowering of monitoring accuracy. Also, there is lacking anything in the '346 patent

that can be said to involve the implementation of a fail safe mode that acts to prevent the implementation of a vehicle control or warning. As an example (not intended to be limiting), if a potential monitoring accuracy problem is determined to exist under the present invention, there is prevented from executing the vehicle braking, gear down and/or warning designation often associated with front view monitoring systems with preventative action systems. There is lacking in the '346 patent anything which puts its vehicle control or warning system in a non-active fail safe mode based on a determination that a **fail has occurred on the monitoring system**.

Rather a review of the above quoted and relied upon disclosure of the '346 patent merely discloses a front view monitoring system and the activation of a vehicle control or warning when, for example, the distance or some other viewed feature is deemed to warrant the implementation of the vehicle braking or other control or warning. Further, there is no inactivation of the vehicle control system based on a determination that the monitoring system may have the potential for a misreading or misinterpretation as due to a luminance state. Also, any luminance discussion in the '346 patent is directed at determining, for example, distances to vehicles and is in no way involved in data review for the purpose of determining whether there is a potential fail situation on the monitoring system.

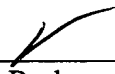
In view of the foregoing it is respectfully submitted that all pending claims as they stood prior to the final rejection are allowable over the prior art, and confirmation by the Examiner is earnestly solicited.

Request For Reconsideration
U.S. Appln. No.09/902,576

If any fees under 37 C.F.R. § 1.16 or 1.17 are due in connection with this filing that are not accounted for, please charge the fees to Deposit Account No. 02-4300, Order No. 032405.084.

Respectfully submitted,
SMITH, GAMBRELL & RUSSELL, LLP

By:



Dennis C. Rodgers, Reg. No. 32,936
1850 M Street, N.W., Suite 800
Washington, D.C. 20036
Telephone: (202) 263-4300
Facsimile: (202) 263-4329

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